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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/608,192

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Kestutis Patiejunas

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INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

OSMAN, RAMY M

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/608,192	Applicant(s) PATIEJUNAS, KESTUTIS	
	Examiner RAMY M. OSMAN	Art Unit 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,11-18,20,22-30,32-44 and 46-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,11-18,20,22-30,32-44 and 46-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/26/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is responsive to amendment filed on April 16, 2009. Claims 1-6,8,11-18,20,22-30,32-44,46-49 remain pending.

Response to Arguments

2. Applicant has responded to the 112 first paragraph rejection by citing explicit support in the original specification. This is persuasive to overcome the 112 first paragraph rejection which is now withdrawn. However, it is noted that the language and scope is quite broad and is at least given an interpretation according to at least paragraphs 22-23, i.e. no feedback loop and no flow control. Bolik is similar to this in that Bolik does not involve a feedback loop or flow control.
3. Applicant's arguments, filed 4/16/09, with respect to the rejection(s) of claim(s) 1-48 under 102(e) have been fully considered but are not persuasive.
4. On page 10 of remarks, Applicant argues that Bolik does not describe associating each of the sources with at least one corresponding session.

In reply, Bolik does teach this where multiple clients 4a,4b,etc (i.e. the data sources) are associated with a single group object in a backup session (column 5 lines 65-67).

5. On page 11 of remarks, Applicant argues that Bolik teaches objects organized in a database which is not related to transmission to the storage and that Bolik does not avoid flow control by storing objects in groups.

In reply, Bolik does indeed teach that the backup objects are related to the transmission because they are organized in the database prior to being transmitted to the backup storage

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(column 6 lines 10-20). By storing the objects in groups it enables buffering/queuing of the objects for transmission without dealing with small scale flow control. Since the claim language is presented as a negative limitation without positively reciting the inner workings of the transactions, then the claim is given its broadest reasonable interpretation and is thus seen to be satisfied by Bolik.

6. On page 11 of remarks, Applicant argues that Bolik does not teach “transforming the data into message objects”.

In reply, the limitation “transforming” is broad and fails to provide any details of what “transforming” actually entails. It is given its broadest reasonable interpretation and Bolik appears to satisfy this limitation with the backup objects.

7. On pages 13-14 Applicant argues the 103 rejection in view of the Krause reference.

In reply, the Krause reference is withdrawn as teaching the input buffer. However, “Official Notice: is taken that input data buffers are old and well known in the art.

8. On page 15 Applicant argues the transaction log of Bolik is not the same as the output queue.

In reply, the transaction log of Bolik appears to perform the same functionality as the broadly claimed output queue since the transaction log stores the objects prior to their transmission. The claims fail to detail what exactly the “buffering” function of the queue entails that makes it different from a simple store-and-forward queue/log.

Claim Rejections - 35 USC § 101

9. Claims 1-6,8,11,12 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1, for example, recites a " system". The scope of the limitation "system" encompasses software-only embodiments since the claim lists software elements such as: "interface", "engine, "module". Software is not statutory because it is simply abstract ideas and is not directed to an actual physical device. For a claim like this to be statutory, it is required to be tied to a type of hardware device. These claims do meet this criterion and are therefore deemed non-statutory. **See MPEP Chapter 2106.01 Section I.**

10. Claims 13-18,20,22-24 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" or "method" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant method claims are neither positively tied to a particular machine or hardware element that accomplishes the claimed method steps, nor do the claims perform transformation of underlying subject matter into a different state or thing. Since neither of these requirements are met, the method claims are not a patent eligible process under 35 USC 101 and are deemed as non-statutory subject matter.

(MPEP Section 2106.IV.B and 2106.IV.C)

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-6,8,11-18,20,22-30,32-44,46-49 rejected under 35 U.S.C. 103(a) as being unpatentable over Bolik (US Patent No 6857053).

13. In reference to claim 1, Bolik teaches a system for managing the transmission of data from at least one data source to a remote destination, the system comprising:

an input interface to receive data from data from at least one data source (column 6 lines 3-7);

a transport interface to a transport layer (column 3 lines 20-30); and

a communication engine, communicating with the input interface and the transport interface, for encapsulating the data into one or more message objects and for associating each of the data sources with at least one corresponding session (column 6 lines 11-25 and figure 2a #50, backup object entry is the encapsulation),

wherein the one or more message objects are buffered in an output queue prior to transmission to the remote destination via the transport layer (column 6 lines 18-34, where on line 26 the phrase “then writes” denotes that the buffering occurs prior to the server writing the objects to the backup storage);

a dispatcher module for binding more than one session to a single connection, wherein the one or more message objects are transmitted through the single connection to a remote

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destination , and without small scale flow control (column 5 lines 65-67 and column 6 lines 5-34).

Bolik fails to explicitly state that the remote destination has an input message queue for buffering the one or more message objects. However, “Official Notice” is taken that input queues for buffering incoming data is old and well known in the art in order to compensate for transmission discrepancies and preventing under utilization or over utilization errors. It therefore would have been obvious to include an input buffer queue in the backup storage for preventing utilization errors.

14. In reference to claim 2, Bolik teaches a system according to claim 1, wherein the at least one data source comprises a network (column 3 lines 12-20).

15. In reference to claim 3, Bolik teaches a system according to claim 2, wherein the network comprises at least one server (column 3 lines 12-20).

16. In reference to claim 4, Bolik teaches a system according to claim 3, wherein the network comprises a local area network (column 3 lines 15-20).

17. In reference to claim 5, Bolik teaches a system according to claim 1, wherein the transport layer comprises a Transport Control Protocol layer (column 3 lines 10-35).

18. In reference to claim 6, Bolik teaches a system according to claim 1, wherein the remote destination comprises a storage host (column 3 lines 21-26).

19. In reference to claim 8, Bolik teaches a system according to claim 1, wherein the at least one data source comprises a plurality of data sources (column 3 lines 12-20 and column 6 lines 3-7).

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20. In reference to claim 11, Bolik teaches a system according to claim 10, wherein the communication engine binds more than one session to at least one of the connections to the remote destination (column 6 lines 3-34).

21. In reference to claim 12, Bolik teaches a system according to claim 1, wherein the buffering of the message objects is performed at least in part according to a state of a message completion port (column 6 lines 3-37).

22. In reference to claims 13-18,2,22-24, these are method claims that correspond to the system claims of 1-6,8,11-12. Therefore, these claims are rejected based upon the same rationale as the rejections of claims 1-6,8,11-12.

23. In reference to claims 37-44,46-49, these are storage media claims that correspond to the system claims of 1-6,8,11-12. Therefore, these claims are rejected based upon the same rationale as the rejections of claims 1-6,8,11-12.

Conclusion

24. The above rejections are based upon the broadest reasonable interpretation of the claims. Applicant is advised that the specified citations of the relied upon prior art, in the above rejections, are only representative of the teachings of the prior art, and that any other supportive sections within the entirety of the reference (including any figures, incorporation by references, claims and/or priority documents) is implied as being applied to teach the scope of the claims.

25. Applicant may not introduce any new matter to the claims or to the specification. For any subsequent response that contains new/amended claims, Applicant is required to cite its corresponding support in the specification. **(See MPEP chapter 2163.03 section (I.) and chapter 2163.04 section (I.) and chapter 2163.06)**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMY M. OSMAN whose telephone number is (571)272-4008.

The examiner can normally be reached on M-F 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ramy M Osman/
Primary Examiner, Art Unit 2457

July 14, 2009